

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Billed Party Preference)
for 0+ InterLATA Calls)

CC Docket No. 92-77
Phase 1

COMMENTS OF U.S. LONG DISTANCE, INC.
IN SUPPORT OF PETITIONS FOR RECONSIDERATION

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SUMMARY

USLD supports the petitions for reconsideration filed by CompTel, MCI and others urging the Commission to reconsider its decision not to adopt the 0+ public domain proposal. As the petitions demonstrate, the CIID Card Order concludes that consumers and operator services competition were harmed by AT&T's false statements, its exclusive ability as the dominant carrier to issue a proprietary 0+ card, and by its marketing practices designed to use the AT&T-created consumer frustration and confusion to coerce aggregator locations to presubscribe to AT&T. The Order fails, however, when it refuses to adopt the 0+ public domain solution to these problems, basing its decision on an improper analysis of the costs and benefits of 0+ public domain and improperly skewing its analysis based upon AT&T's "threat" to move to access code dialing.

The Order takes no actions to correct AT&T's false

taken by the Commission utterly fail to remedy the continuing harm from AT&T's reliance on the 0+ access method for proprietary calling.

USLD urges the Commission on reconsideration to adopt the 0+ public domain proposal. 0+ public domain will provide simple and clear dialing instructions for all calling cards, whether proprietary or nonproprietary. In addition, unlike the Commission's CIID Card Order, adoption of 0+ public domain does not require the Commission to implicitly or explicitly prejudge the merits of billed party preference. Finally, the pledge of many operator services industry participants to charge AT&T rates for calls charged to the AT&T CIID card refutes the claim that the CIID card is necessary to protect callers from alleged "overcharges" by IXCs other than AT&T. Accordingly, the Commission should order a policy of 0+ in the public domain.

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COMMENTS OF U.S. LONG DISTANCE, INC.
IN SUPPORT OF PETITIONS FOR RECONSIDERATION

U.S. Long Distance, Inc. ("USLD"), by its attorneys, hereby supports the petitions for reconsideration filed in this docket by CompTel, MCI, and others.¹ USLD agrees with these petitioners that the Commission erred in rejecting the 0+ public domain proposal in its Phase 1 Report and Order and Request for Supplemental Comment ("CIID Card Order").² USLD urges the Commission to correct these errors on reconsideration and implement a system of 0+ in the public domain -- the only proposal that will remedy the harms to consumers and competition found by the Commission.

The CIID Card Order correctly concludes that consumers were misled and confused and that competition in operator

¹ USLD supports the petitions for reconsideration filed on January 11, 1993 by the Competitive Telecommunications Association ("CompTel"), MCI Telecommunications Corp. ("MCI"), International Telecharge, Inc. ("ITI"), LDDS Communications, Inc. ("LDDS"), PhoneTel Technologies, Inc. ("PhoneTel"), Polar Communications Corp. ("Polar"), and Value-Added Communications, Inc. ("VAC").

² Billed Party Preference for 0+ InterLATA Calls,
Report and Order and Request for Supplemental Comment, CC
Docket No. 92-77, Phase 1, FCC 92-465 (Nov. 6, 1992).

services was threatened by anticompetitive actions by the dominant carrier in the market, actions that included false statements that "the government" required AT&T's new cards, overbroad statements calculated to mislead cardholders into discarding or destroying otherwise valid local exchange carrier (LEC) cards, and hopelessly confusing instructions to

I. The CIID Card Order Does Not Remedy
the Harm Experienced by Consumers and
Competition From AT&T's Anticompetitive Actions

Petitioners correctly argue that the CIID Card Order
will not remedy the harms caused by AT&T's actions in
introducing a proprietary 0+ calling card -- harms which the

AT&T's misleading and discriminatory CIID card practices

action to remedy the effects of these false statements. In fact, although AT&T intentionally caused potentially tens of millions of dollars in harm to competitors and consumers, the Commission's "punishment" was less severe than that normally given to radio stations failing to broadcast the required station identifications.⁵

More importantly, evidence of AT&T's misstatements and their effects was presented in this docket, yet the Commission excluded it from its consideration based upon the separate letter of admonition (§ 23). It is arbitrary for the Commission to justify its inaction in this docket based upon separate actions taken by the Commission if those actions also fail to remedy the harm. Yet that is precisely what happened here. AT&T's false statements greatly skewed the competitive environment in its own favor by enabling it to seize as proprietary much of the shared base of LEC joint use calling cards resulting from divestiture. There can be little doubt that AT&T actions caused the destruction of many "LEC joint use" cards and their replacement with AT&T proprietary cards.⁶ As LDDS stated, the Commission's

⁵ See In the Matter of Standards for Assessing Forfeitures, Policy Statement, 6 FCC Rcd 4695 (1991) (establishing a base forfeiture of \$2,500 for station identification violations).

⁶ This confusion of AT&T CIID cards with LEC joint use cards removes any argument that "0+ public domain" should not extend to AT&T CIID cards. By its own willful acts, AT&T waived any claim to a property right in "its" base of calling card holders.

inaction permits AT&T to continue to benefit from these misstatements, giving AT&T only a meaningless slap on the wrist.⁷

At the very least, the Commission should have taken some affirmative action to correct the misunderstanding that "the government" required AT&T's cards. One such approach would be to require AT&T to inform all CIID cardholders that its original letters may have created the false impression that the government required AT&T to issue the new calling card and may have induced cardholders to destroy telephone line-number based cards that were in fact valid cards. CIID cardholders should be instructed further that they are entitled to obtain a line-based card number from their local phone company, which may be used in addition to or instead of the AT&T CIID card and is valid at nearly all locations (including those where AT&T is the presubscribed carrier), and that they should contact the LEC if they wish to order a line-number based calling card. Without this sort of remedial action, the Commission's reliance on its actions elsewhere as the basis for inaction in this docket is simply arbitrary and capricious.

⁷ LDDS Petition at 4.

**B. The CIID Card Order's
Remedies Are Woefully Inadequate**

Regarding the continuing harm caused by AT&T's CIID card, the CIID Card Order inadequately addresses the harm because it permits the root of the problem -- AT&T's combination of 0+ access and proprietary card policies -- to continue undisturbed. The "actions" taken by the Commission largely are illusory and ineffective. First, the Commission's promise to consider the billed party preference proposal (§ 50) is not remedial in the least. CIID cardholders will continue to place unbillable call attempts at phones presubscribed to USLD and other IXCs, and AT&T will

confusion. This advantage is greatest at hospitals, universities, and other locations where telephone communications is an additional convenience offered to the aggregator's customers. In these locations, any relative customer inconvenience -- particularly consumer frustration that the aggregator or OSP is "forcing" the caller to dial an access code -- harms the aggregator's ability to provide its primary service. For example, a hospital may fear that a maternity patient inconvenienced by her phone service will select a different hospital for her healthcare needs. AT&T has capitalized on this type of inconvenience created by its CIID card to coerce the hospital aggregator into selecting AT&T. This effectively forecloses this important segment of the operator services market from any competition. Yet, compensation will merely cover the extra costs imposed by AT&T on its competitors; meanwhile, AT&T uses its unfair advantage to capture their customers.

The benefits of the "consumer education campaign" ordered by the Commission are minimal. As long as some 0+ cards are proprietary and some are not, callers will continue to be confused about when 0+ dialing is permissible and when an access code will be required. Indeed, Southwestern Bell's petition for reconsideration provides ample illustration that confusion will remain even after the education campaign

ordered by the Commission.⁹ This confusion is exacerbated by AT&T's discriminatory validation policies which permit selected LECs and IXC competitors to accept the CIID card.¹⁰ In fact, to be completely accurate, AT&T's dialing instructions would have to recreate a "decision tree" that follows these steps:

1. Determine whether the call is an interLATA or intraLATA call.
2. Determine the presubscribed IXC at the phone.
3. If the call is interLATA and the IXC is AT&T, dial 0+.
4. If the call is interLATA but the IXC is not AT&T, dial 102880 (or 1-800-CALLATT where 10XXX access is permitted to be blocked).
5. If the call is intraLATA and the phone is in the territory of a LEC with whom AT&T has a mutual honoring agreement, dial 0+. (Or, if AT&T is certified for intraLATA carriage in the state, dial 102880.)
6. Finally, regardless of the above, if the phone is in Alaska or is a GTE Airfone or Railfone, then dial 0+.¹¹

⁹ In its Petition, SWBT asks the Commission to order AT&T to make clear that despite AT&T's other dialing instructions, the caller can complete local or intraLATA calls on a 0+ basis even if the caller does not hear the "AT&T" aural brand. SWBT Petition at 3. This self-serving attempt by SWBT to get itself exempted from the competitive harms of the CIID Card Order while simultaneously opposing the relief sought by interLATA competitors should be disregarded.

¹⁰ See MCI Petition at 3-4; LDDS Petition at 6; PhoneTel Petition at 3-4.

¹¹ AT&T's preference for certain IXCs, in addition to being a blatant violation of Section 202 of the
(continued...)

To be fully effective, these instructions should be accompanied by a LATA map. Obviously, such instructions are unwieldy and unrealistic. However, unless the Commission protects the bright line established by the use of 0+ dialing for nonproprietary cards only, confusion regarding the proper use of 0+ dialing will continue.

Finally, possibly the best illustration of the

to such cards. With an AT&T line-based proprietary card, moreover, competitive IXCs would have no means of identifying such cards before validation because a line-based 0+ proprietary card is indistinguishable from a misdialed PIN for a LEC card or a fraudulent call attempt. As a result, IXCs would incur even greater expenses than now are associated with the AT&T CIID card, and callers would be even more confused since the IXC's only possible explanation would be that the card number is not "valid."

In short, the CIID Card Order appears to permit AT&T, using technology now in place, to issue proprietary 0+ line number based calling cards which could be used for both interLATA and intraLATA calling. As was the case with the CIID card, AT&T's market dominance makes it the only IXC capable of issuing such a 0+ card. Without 0+ in the public domain then, the remedy adopted by the CIID Card Order is clearly meaningless.

II. The Commission's Rejection of 0+ Public Domain Was Fatally Flawed

The 0+ public domain proposal is unquestionably the best way to protect the interests of consumers and of competition in operator services. The CIID Card Order relied on an erroneous cost-benefit analysis in rejecting 0+ public domain as the preferred solution.

First, the benefits of 0+ public domain are great. 0+ public domain is simple and clear to calling card users. The proposal would establish a "bright line" between proprietary and nonproprietary cards and provide simple and clear dialing instructions for each: when using a nonproprietary card, dial 0+; when using a proprietary card, dial the issuing carrier's access code. This solution comports with callers' expectations created by years of experience with all other calling cards. As a result, caller confusion would be reduced to a minimum and IXCs could continue to compete on the basis of service and quality, without the interference of carrier-induced confusion.

Second, as CompTel and MCI note,¹³ either choice by AT&T under 0+ public domain would further competition and benefit consumers. If AT&T chose to permit validation of the CIID card, the caller's ability to use the card on a 0+ basis at all phones would be restored, and the incidence of misdirected unbillable CIID card attempts would be eliminated. If, on the other hand, AT&T chose to use an access code for its CIID card, the unfair advantage that it receives as the only carrier capable of issuing a proprietary 0+ card would be nearly eliminated. Callers would know that if they wanted to be guaranteed to reach AT&T (or any other carrier) they could do so by dialing its access code, and

¹³ CompTel Petition at 15-16; MCI Petition at 4.

could choose among the various proprietary and nonproprietary calling cards on an equal basis.

The Commission's cost-benefit analysis of these facts erroneously counted the possibility of AT&T's shift to access code calling as a "cost" rather than a benefit. This flaw was based on the incorrect presumption that more consumer confusion and inconvenience would result from such a transition than from the plan actually adopted, a misperception reinforced by AT&T's repeated threats to publicly "blame" the Commission if AT&T chose to move to access code dialing. In fact, consumers would have one simple operation to learn with access code dialing instead of the current requirement to read the fine print on the front of the telephone and follow the decision tree and LATA map procedure described above.

Third, under either AT&T choice the incidence of misdirected call attempts would be reduced almost entirely, thereby eliminating the need for a potentially cumbersome compensation mechanism. If AT&T elected to continue relying on 0+ access, unbillable CIID card attempts would be eliminated because other IXCs would be permitted to validate and bill calls placed over their networks. If, on the other hand, AT&T moved to access code dialing, users would learn to dial the access code and 0+ attempts would not be made routinely by callers with proprietary cards. Again, access

code dialing for AT&T's proprietary cards would be a benefit, not a cost.

Fourth, adoption of 0+ public domain does not prejudice the Commission's consideration of billed party preference. 0+ public domain would restore the status quo that existed prior to AT&T's CIID card, in which the industry operated under an unstated principle of 0+ in the public domain. This would preserve the opportunity for competition in operator services while the Commission fully examines billed party preference. Indeed, the record indicated that 0+ public domain may be necessary to prevent the re-monopolization of the operator services market before billed party preference could be implemented, even if it were adopted immediately. This is so because even under the most optimistic LEC estimates billed party preference is over four years distant, necessitating immediate action in the form of 0+ public domain.

Finally, any claims that the proprietary nature of the AT&T CIID card is necessary to protect callers from alleged

"exchanges" are belied by the evidence that 000-

Conclusion

For the foregoing reasons, USLD respectfully submits that the petitions for reconsideration should be granted and the Commission should immediately adopt the 0+ public domain proposal.

Respectfully submitted,

U.S. LONG DISTANCE, INC.

By: 

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 1993, I caused copies of the foregoing "Comments of U.S. Long Distance, Inc. in Support of Petitions for Reconsideration" to be mailed via first-class postage prepaid mail to the parties on the attached list.


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